

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

JENNIFER ROUSSELL, on behalf of
Herself and others similarly situated,

Plaintiff,

V.

BRINKER INTERNATIONAL, INC.,

Defendant.

Civil Action No. 4:05-CV-03733

**Plaintiffs' Motion in Limine to Exclude Evidence of Tips Received By Plaintiffs
In Excess of the Tip Credit Taken By Defendant**

Plaintiff Jennifer Roussell, on behalf of herself and other similarly situated, files this motion *in limine* to exclude any evidence or testimony regarding tips earned by Plaintiffs in excess the tip credit taken by Brinker International, Inc. (“Defendant”).

Any testimony or evidence of tips earned in excess of the tip credit taken by Defendant is irrelevant and inadmissible under Federal Rules of Evidence 401 and 402. The tips earned by Plaintiffs are only relevant in this case to determine the unpaid minimum wages owed to them once Defendant’s tip pools are found to be illegal. If Defendant’s tip pools are ruled invalid, the unpaid wages due to Plaintiffs would be the difference between the sub-minimum wage paid to the servers and the applicable Federal minimum wage – also known as the tip credit taken by Defendant for these tipped employees. See 29 U.S.C. § 203(m); Opinion Letter (November 4, 1997); Chung v. New Silver Palace Restaurant, Inc., 246 F.Supp.2d 220, 230-31 (S.D.N.Y. 2002). However, any tips received by Plaintiffs **in excess** of this tip credit taken by Defendant would have no bearing on any issues at trial. Accordingly, this testimony is irrelevant and inadmissible under the Federal Rules of Evidence.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’ motion *in limine* to exclude any evidence relating to tips earned by Plaintiffs in excess of the tip credit taken by Defendant.

Dated: March 2, 2009

Respectfully submitted,

By: /s/ James Kan

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing instrument has been forward to all counsel of record via the Southern District of Texas'CM/ECF electronic filing system on March 2, 2009:

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